

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

JOSE ANGEL MARTINEZ-CANTU,

Plaintiff,

v.

Civil Action No: 1:15-12961

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendants' motion to dismiss or, in the alternative, motion for summary judgment. (Doc. No. 25). By Order, this matter was referred to United States Magistrate Omar J. Aboulhosn for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 24). Magistrate Judge Aboulhosn submitted to the court his Proposed Findings and Recommendation on July 28, 2016, in which he recommended that the district court grant defendants' motion. (Doc. No. 34).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Aboulhosn's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Plaintiff failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Aboulhosn, the court adopts the findings and recommendation contained therein.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly the court **DENIES** a certificate of appealability.

The court hereby **ADOPTS** the factual and legal analysis contained within the PF&R, **GRANTS** defendants' motion to dismiss, or in the alternative, for summary judgment, (Doc. No. 25), **DISMISSES** plaintiff's complaint as to defendants the United States of America, Bart Masters, and Kelly Lucas, **GRANTS** summary judgment in favor of defendants Tracey Walters, W. Walters,

Ashley Stark, and Dr. Isaac Alexis, and **DIRECTS** the Clerk to remove this case from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and plaintiff, pro se.

It is **SO ORDERED** this 17th day of August, 2016.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge